

DRAFT DOCUMENT



Gaithersburg

A CHARACTER COUNTS! CITY

CITY OF GAITHERSBURG

MINUTES OF A REGULAR CITY COUNCIL MEETING

JANUARY 3, 2006

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Alster, Edens, Marraffa, Schlichting (arrived 7:40 p.m.) and Sesma. Staff present: City Manager Humpton, Assistant City Managers Felton and Tomasello, Planning and Code Administration Director Ossont, Community Planning Director Schwarz, Senior Plans Examiner Lee, City Attorney Borten. Planning Commissioners present for the joint public hearings: Bauer, Hopkins, Kaufman (Alt.), Levy and Winborne.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by Carroll Kearns, Gaithersburg, Maryland.

II. INVOCATION

The invocation was led by Maxine Oliver, Baha'i Faith.

III. APPROVAL OF MINUTES

Approval of the December 19, 2005 minutes of the Mayor and City Council, deferred.

IV. FROM THE CITY MANAGER

1. Updated the Mayor and City Council on the Day Laborer Center and the recently established task force. He stated that the task force will meet on January 3, 2006 and every Tuesday following, until the beginning of April. At that time, the task force will report back to the Mayor and City Council. He mentioned that on December 19, 2005, the task force was established and appointments were confirmed by the City Council. On December 21, 2005, the task force held an organization meeting. He stated that all the meetings are open to the public and information is available on the City's website at www.gaithersburgmd.gov.
2. Updated the Mayor and City Council on the status of the City's request for a left turn lane from Maryland 124 into Twin Lakes Drive. He stated ongoing discussion have been conducted with the State Highway Administration (SHA). At one time, the SHA were opposed to the left turn lane, not deeming it necessary. He reminded the City Council that development was approval for the Taiwanese Cultural Center located at 901 Wind River Lane and the City Council at that time, encouraged the Planning Commission to attach a condition requiring the developer of the center to install the left turn lane and continue to work with the SHA. He stated that staff has had continued dialog with the SHA who have reconsidered the request and is now working with the developer to effect the change. City Manager Humpton stated that a recent letter was received from the SHA indicating that two left turn lanes were needed. He reiterated that the developer only agreed to install one left turn lane. He stated that the City's Traffic Engineer has been working with the State to resolve the issue. He further stated that staff is scheduled to have another meeting with the State to discuss the traffic numbers identifying the need for the proposed two lanes.

3. City Manager Humpton gave an updated on the West Deer Park Relocation Plan. He stated that one of the Planning Commission's conditions of the preliminary site plan, was that the City Manager approves a relocation plan to assist current residents to find alternative housing. He stated that in addition to the two meetings with residents, Assistant City Manager Felton and he met with representatives of the tenant association on December 3, 2005, to discuss the plan. Following that meeting, two additional meetings were held on December 19 and the 29, 2005. He mentioned that Council Member Sesma was in attendance at the December 29, 2005 meeting. The major issue raised by the residents at that time was that they did not want to vacate the property before June 30, 2006. He stated that the developer has agreed to accommodate this request. A key issue raise during the meeting with representatives from the tenant association was that long term residents were currently paying lower than market rate rents. As a result of the below market rent rate, the three months lump sum payment originally negotiated with the developer, would not be adequate for long term residents. He stated that it is a valid concern and staff has asked the developer to agree to provide relocation assistance of three months based on current market rent. During the two most recent meetings with residents, concerns were raised about the increase cost tenants would incur due to utilities that were included in their rent at the West Dear Park Apartments. To compensate for this, tenants has requested a fourth months rent. He stated that the law only requires the developer to pay tenant relocation fees in the amount of two months based on current rent. In addition to financial assistance, the developer has been required to make a relocation specialist available to the residents to assistance with finding new housing and provide information on rentals, application fees, utilities and local schools. A staff team has been working with tenants who are having difficulty locating suitable housing. He stated that the City has committed \$200,000 to the recently created homeownership fund for the West Deer Park residents, and based on the number of calls received from the residents, the total amount will be used to assist tenants interested in homeownership. He further stated that 60 units are already vacated and another 70 residents have given notice to vacate. Mr. Humpton stated that he intends to approve the plan so the redevelopment project can move forward during final site plan review at the Planning Commission meeting on January 4, 2006. In response to a security deposit concern raised, Assistant City Manager Felton responded that residents would receive three months market rate rent plus any accrued interest on their security deposits unless they are in arrears.

V. PUBLIC APPEARANCES

1. *Franklin Tucker, West Deer Park Apartments Tenant*, expressed hardships that he has experienced and asked for a sliding scale for payouts based on the number of years a tenant has lived at the West Deer Park Apartments. He conveyed concerns by another tenant in regards to qualifying for assistance through the City's Relocation Program.
2. *Kenny Joholske, tenants association at West Deer Park Apartments*, expressed disappointment in the communication between the City and tenants in regards to the relocation plan. He stated that the receipt of three months rent to relocate is not adequate.
3. *Pete Exis, West Deer Park Apartments Tenant*, expressed difficulty to find housing that is the same or adequate size and comparable to the apartments at West Deer Park. He stated that the relocation is going to be a hardship on the majority of the tenants. He asked for tenants to receive a fourth months rent.
4. *Stephanie Lilly, West Deer Park Apartments Tenant*, asked that a fourth months rent be negotiated with the developer to ease the burden of the move, if not an additional fifth month. Stated that the research and information compiled by tenants should have been prepared by the City before asking tenants to leave their homes.
5. *Joan Levy, West Deer Park Apartments Tenant*, asked that the developer reconsider the fourth months rent to assistance tenants with their relocation.

VI. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**Council Member Sesma**

1. Referred to the West Deer Park Apartment relocation plan, stating that tenants are experiencing hardship in relocating and finding amenities comparable to what they currently have. He asked staff to assist the tenants as much as possible.
2. Wished all a Happy New Year!

Council Member Marraffa

Echoed Happy New Year to the public!

Council Member Alster

1. Expressed Happy New Year to all!
2. Asked staff to assist and put their best efforts forward with the relocation for the tenants at the West Deer Park Apartments. He stated that redevelopment is of value, but the City should also stay focused on affordable housing in Gaithersburg.

Council Member Edens

Wished the public a Happy New Year!. She suggested that citizens make a resolution to get involved in making important decision for the City and announced vacancies on various Committees, Commissions and Boards.

Council Member Schlichting

Echoed Happy New Year to all! Announced registration for Gaithersburg Winter Recreation Classes begins Sunday, January 8th for residents and Wednesday, January 11th for non-residents.

Mayor Katz

1. Joined the City Council Members in wishing the public a Happy New Year!
2. Commended staff for their efforts in the relocation of the tenants at the West Deer Park Apartments. He asked staff to contact the developer to address the possibility of tenants receiving an extra month's rent.
3. Announced a joint work session will be held on Monday, January 9, 2006, to discuss **Z-301**, proposal to rezone 40.10 acres of land, currently known as Casey East (Parcels P360, P563, and N455) located at the northwest intersection of MD Route 355 (North Frederick Avenue) and Watkins Mill Road, in the City of Gaithersburg, from the existing I-3 (Industrial Office Park) Zone to the MXD (Mixed Use Development) Zone, in accordance with §24-196 (Map Amendments) of the City Code, and **SDP-05-003**, applicant requests approval for the Schematic Development Plan (SDP), known as Casey East (Parcels 360, 563 and N455) in Gaithersburg, Maryland. The proposed plan includes a mix of uses, including 303 residential units, and office, restaurant, retail, service station, and public uses on Approximately 40.10 acres of land. The subject property is Located Northwest of the intersection of Maryland Route 355 (North Frederick Avenue) and Watkins Mill Road, the applicant is also requesting a change from the I-3 (Industrial Office Park) Zone to the MXD (Mixed Use Development) Zone.

4. Reminded the public that the Mayor and City Council will hold their Annual Strategic Planning Retreat on Friday, January 6 through Saturday, January 7, 2006, at the Renaissance Harborplace Hotel, Baltimore, Maryland. He stated that the retreat agenda has been posted on the City's website. Also, minutes will be kept of all public portions of the retreat and will be made available for review. He announced that on Tuesday, January 17, 2006, during the regular Mayor and City Council meeting, City Manager Humpton will provide an overview of what was discussed and accomplished during the retreat, and a public discussion will be held on the Strategic Plan during the City's upcoming FY 2007 budget process.

VII. PUBLIC HEARINGS

1. **An Ordinance to Repeal and Reenact With Amendments, Chapter 5 of the City Code Entitled, "Buildings," and Adopt by Reference, With Certain Modifications, the 2003 International Building, 2003 International Residential, 2003 International Mechanical, 2004 International Energy, and 2003 International Fuel Gas Code**

Senior Plans Reviewer Lee stated the above Ordinance is an administrative measure to update the City's Code and bring the Code into line with State requirements. He asked that the record be held open until January 11, 2006, 5 p.m.

No speakers from the public.

Motion was made by Council Member Marraffa, seconded by Council Member Alster, that the City Council record on the above be held open until 5 p.m. on January 11, 2006.

Vote: 5-0

2. **Joint – SDP-05-006, Proposal for Schematic Development Plan Approval (SDP) for 147,848 Square Feet of Office Use, 55,211 Square Feet of Office/Retail/Restaurant Use and 348 Multi-Family Condominiums With Structured Parking. The subject property is Located in the Washingtonian Center , Parcel K, on Washingtonian Boulevard, South of the Springhill Suites Hotel and north of Negola's Ark Veterinary Hospital and is in the Mixed Use Development (MXD) Zone**

Community and Planning Director Schwarz stated that the above joint public hearing on SDP-05-006, to amend SDP-W4, a previously approved schematic development plan, was advertised on December 12 and 21, 2005 in the *Gaithersburg Gazette*, and the property properly posted. There are currently 59 exhibits in the record file.

Jody Kline, Miller, Miller and Canby, representing The Morgan Group, Inc., a multi-family apartment developer, gave background on the changes to the proposed development. He stated that the new plan is a mixed use community proposing 348 condominiums and 261,406 square feet of commercial, office and retail space.

Mike Watkins, Duany, Plater-Zyberk and Company, gave a design description of the proposed plan which he referred to as the last developer piece of the Washingtonian property. He stated that the project is adjacent to Interstate 270 with other major roadways such as interchange 370, Shady Grove Road, Fields Road and the proposed light rail system. He stated that the developer wanted to create a more balanced pedestrian friendly project with shops and restaurants. Based on a study prepared by the Board of Education, Mr. Watkins stated that the 348 condominiums would generate 25 total students to be served by Wootton High School, Frost Middle School and Fallsmead Elementary School. He stated that the proposed plan would reduce the dependency on the automobile because of the balance of uses in the plan that are within walking distance and public transportation, therefore, lessening the impact on traffic. He reviewed the proposed underneath parking, two courtyards, streetscape, architectural elevations of the various buildings, and public plaza.

In response to Mayor Katz, Christopher Bowyer from Wells & Associates, stated that the lessening of traffic is based on the proposed office mixed use with residential. Several Council Members and Commissioners expressed concern with the results of the studies done for the impact of traffic and students in the area schools and suggested further discussion during a work session. Mr. Watkins mentioned that the fire access concerns have been addressed in the proposed plan.

Speakers from the public were:

1. *Justin Preuninger, 4 Sanders Court*, expressed opposition to the proposed plan due to its high density. He stated that the traffic study numbers seem to be deceptive.
2. *Chantal Preuninger, 4 Sanders Court*, expressed opposition to the high density and any further apartment development for the City.
3. *Dr. Daniel Negola, owner of Negola's Ark Veterinary Hospital, 21407 Upper Mount Lane*, stated he is in favor of the proposed plan and expressed appreciation for the additional parking spaces available to his business.
4. *Diane Cronin, 25 Bayshore Court*, expressed support for the proposed plan stating that it is compatible with the surrounding uses. She stated that the proposed plan would help alleviate the parking problems at the neighboring veterinary hospital.
5. *Kimberly Bowers, employee of Dr. Negola*, expressed support for the proposed plan stating that she has heard positive comments from hospital clients.

There were no other speakers at the hearing.

Motion was made by Commissioner Levy, seconded by Commissioner Winborne, that the Planning Commission record on SDP-05-006, be held open indefinitely.

Vote: 5-0

Motion was made by Council Member Alster, seconded by Council Member Marraffa, that the City Council record on SDP-05-006, be held open indefinitely.

Vote: 5-0

3. **Joint – T-371, An Ordinance to Amend Chapter 24 of the City Code, Entitled, “Zoning,” Article III, Entitled, “Regulations Applicable to Particular Zones,” Division 22, Entitled, “CD Zone, Corridor Development,” Section 24-160G-5, Entitled, “Waiver of Development Standards,” to Modify Section 24-160G.5(a) to Permit Waiver of Height Requirements by the City Council for Properties Located in an Employment District, a Commercial District or a Residential District**

Community Planning Director Schwarz stated the above joint public hearing was advertised in the December 12 and 21, 2005 issues of the *Gaithersburg Gazette*, with 11 exhibits in the record file. The text amendment proposes to allow buildings in the Frederick Avenue Corridor District to be built up to eight stories with a waiver. Mrs. Schwarz stated that the existing language only allows the City Council to grant a waiver for eight story buildings in the Employment District, north of Montgomery Village Avenue. She stated that without the waiver, the Residential District allows three stories not to exceed 35 feet and the Commercial District or the Fairgrounds District allows four stories and the Employment District allows six stories.

Jody Kline, Miller, Miller & Canby, stated that his client is considering redevelopment in the Frederick Avenue Corridor. He stated that following review and discussion of the CD Zone, it was noted that the City Council can waive height restrictions, but only in the Employment District. The proposed text amendment suggests that it would be to the City's advantage to extend the authority of the City Council to eliminate reference to the Employment District, thus giving the City Council and Planning Commission the discretion in any one of the three districts to allow buildings up to eight stories based on the situation and the design goals in the CD Zone. He noted that his client is not interested in building an eight story building in the Frederick Avenue Corridor, but the proposed text amendment would allow the flexibility of design, remove limitations in the zone, and allow the City Council the discretion of what would be appropriate. He stated that he did not want the proposed text amendment to convey the wrong message and stated that he is willing to work with the City Council, Planning Commission and staff to come up with more appropriate language to offer the requested flexibility.

Concerns and questions were raised regarding the introduction and sponsorship of the proposed text amendment. Several stated that no discussions via memorandum or work session were presented to understand and question what is being proposed by the applicant.

In response to Mayor Katz and several Council Members and Commissioners, City Attorney Borten suggested the applicant withdraw the current text amendment request, the Mayor and City Council and Planning Commission close their records, and the applicant come back and go through the process with a new proposed text amendment. The Mayor and City Council and Planning Commission concurred to still hear from the public.

Speakers from the public were:

1. *Carroll Kearns, 406 Gaither Street*, expressed opposition to eight and nine story buildings in the R-90 zone. He stated that change is needed in the Frederick Avenue Corridor, but in moderation. He asked that the change be acceptable to all and that it be compatible with existing and proposed adjacent land uses.
2. *Daniel Reeder, 11520 Game Preserve Road*, expressed disappointment in the introduction and the confusion of the proposed text amendment. He stated that Mr. Kline's client interest in developing a piece of property in the CD Zone should go through the Master Plan process and follow certain development standards that are specified in the City Code. The Code and development standards clearly indicate that the Council can only approve waiver height requirements upon a finding that the additional height is necessary to implement the Master Plan and a specific corridor plan for Gaithersburg. In addition, the height must be compatible with existing and proposed adjacent land uses.
3. *Robert Drzyzgula, 16 Walker Avenue*, read a letter on behalf of his wife Cathy Drzyzgula. In her letter she referred to the approved text amendment at the December 19, 2005 meeting, allowing building up to eight stories in the Olde Towne area. She further stated that the proposed text amendment contradicts the Master Plan and that it was developed and planned with public input and change and should not be considered for one private applicant or a specific parcel. She asked the City to decide the purpose of the Master Plan and how to use it in accordance with state law and the benefit of the City as a whole. She further stated in the letter that the Master Plan was not intended to be used as a negotiating tool to be followed and ignored when convenient for a specific development, but that it serve as a public agreement between the City and its citizens to guide future development. In closing, she stated that the City should perhaps look to revising the City's Frederick Avenue Corridor Plan and Master Plan, and if changes are required, then it should go through the appropriate process.
4. *Pam Lindstrom, 421 Gaither Street*, urged the City Council and Commission not to consider any waivers for the proposed text amendment. She suggested that such a text amendment be considered in the Master Plan. She also expressed that notification by the City was not adequate for the hearing.

5. *Justin Preuninger, 4 Sanders Court*, stated that he received notification of the joint public hearing through the City's myGaithersburg. He expressed disappointment that the City would consider making exceptions for developers and stated that higher buildings are unsightly.
6. *Ken Roynestad, 414 Gaither Street*, expressed concern that the above proposed text amendment had gotten this far in the process.
7. *Elizabeth Witzgall, 20 Walker Avenue*, stated that the proposed text amendment is inappropriate for consideration at a City Council meeting and such a proposed text amendment should go through the Master Plan process.
8. *Chantal Preuninger, 4 Sanders Court*, expressed opposition to the proposed waivers for building heights and opposition to the increase of heights for buildings in Olde Towne.

There were no other speakers at the hearing.

Motion was made by Commissioner Levy, seconded by Commissioner Hopkins, that the Planning Commission accept the applicant's withdrawal and closed their record on T-371.

Vote: 5-0

Motion was made by Council Member Alster, seconded by Council Member Sesma, that the City Council accept the applicant's withdrawal and close their record on T-371.

Vote: 5-0

4. **Joint – T-372, An Ordinance to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article V, Entitled, "Site Development Plans, " Section 24-172A, Entitled, "Amendment to Site Development Plan," so as to Revise Requirements for Amending Site Plans**

Community Planning Director Schwarz stated that the above joint public hearing was advertised in the December 12 and 21, 2005 issues of the *Gaithersburg Gazette*, with nine exhibits in the record file. She stated that in 2001, the Planning Commission reinstituted a consent calendar on their agenda in order to run efficient meetings. It was brought to the attention of the Commission and staff that there were conflicts with the Commission proceedings and Section 24-172 of the City Code, so the Commission proposed an amendment to Section 24-172. Mrs. Schwarz stated that the amendment proposed to divide the existing section into two sections to comply with site plans and amendments with a site plans. Section 24-172(a), regulates amendments of site plans, and minor amendments are regulated in Section 24-172(a) (b) where the language is the same except for Section (e), which would allow staff to approve minor additions of 15 percent. She gave examples of amendments approved by the Planning Commission and then suggested minor amendments that are less than 15 percent, approved by the homeowners associations and final approval by staff. She stated that contractors and homeowners have walked into the Planning and Code Administration office and asked for approval expecting to get a permit within a couple weeks. They often find that they have to wait either one or two months to get on the Planning Commission agenda for homes that are part of an existing site plan. It was recommended that staff be allowed to approve minor additions less than 15 percent.

Mayor Katz, Council Members and Commissioners expressed concerns with staff approvals and questioned whether a new homeowner of the existing home could come back and ask for another 15 percent addition or possibly the addition for a second story to their home. Planning and Code Administration Director Ossont clarified that the text amendment addresses plans that are subjected to a previously approved site plan. He stated that staff would only approve the 15 percent addition and if another addition or a significant addition is required, then staff would forward the application to the Planning Commission for review.

Several Council Members and Commissioners asked for further discussion to better understand the staff approval process for simple additions, renovations, improvements to a home and the financial burden on a homeowner due to the current approval process.

Council Member Sesma expressed concern with the reporting of such staff approvals for review by the Planning Commission on a regular basis. Mayor Katz expressed concern with the public being aware of such approvals.

Commissioner Bauer expressed that it would be valuable to the citizens, if small residential projects can go through a process that is not under the same scrutiny as an office building, possibly through staff approval. The Mayor and City Council and Planning Commission agreed to hold their records open indefinitely and schedule a work session for further discussions of staff approvals.

Speaker from the public:

Justin Preuninger, 4 Sanders Court, questioned whether staff approvals could possibly cause problems similar to the Clarksburg development.

There were no other speakers at the hearing.

Motion was made by Commissioner Winborne, seconded by Commissioner Hopkins, that the Planning Commission record on T-372, be held open indefinitely.

Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Alster, that the City Council record on T-372, be held open indefinitely.

Vote: 5-0

VIII. ORDINANCES AND RESOLUTIONS

Resolution to Negotiate and Execute a Memorandum of Understanding (MOU) With Montgomery County on the Expenditure of Development Impact Taxes

This resolution authorized the City Manager to negotiate and execute a MOU with the County. Assistant City Manager Felton stated that the Montgomery County Council enacted Bill No. 47-01, in March of 2002 that would apply county-wide. He stated that the Bill requires developers to pay an impact tax to fund transportation improvements, but representatives from both Gaithersburg and Rockville requested an amendment to the Bill. Both asked that the Bill require that funds collected

from construction projects in the major municipalities only are spent in accordance with a MOU agreed to by the jurisdictions. In conclusion, he stated that City staff worked with Montgomery County on an MOU that would provide that impact tax funds be expended for various City projects.

Motion was made by Council Member Schlichting, seconded by, Council Member Edens, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A MEMORANDUM OF UNDERSTANDING WITH MONTGOMERY COUNTY ON THE EXPENDITURE OF DEVELOPMENT IMPACT TAXES (Resolution No. R-1-06), be approved.

Vote: 5-0

IX. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:40 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Administrative Assistant